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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,288	09/19/2003	Mathew A. Boesch	81044339/202-0355	2287
28395	7590	03/30/2006		
BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			EXAMINER PIPALA, EDWARD J	
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/605,288	BOESCH ET AL.	
	Examiner	Art Unit	
	Edward Pipala	3663	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.                      ✓

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This Office action is in response to Applicant's election received January 6<sup>th</sup> of 2006, in which Group I, claims 1-19 are elected for further examination without traverse.

Accordingly claims 1-19 are presently pending and claims 20-23 are hereby withdrawn from consideration.

### ***Information Disclosure Statement***

2. Applicant's IDS filed with the application on September 19<sup>th</sup> of 2003 has been considered by the Examiner. A copy of Applicant's IDS form has been initialed by the Examiner and accompanies this Office Action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In claim 1, lines 8 – 11, Applicant recites "the first equation including the use of a first velocity relationship relating the engine velocity and the velocity of the first motor based on vehicle architecture".

This claim language is indefinite because Applicant has not clearly defined just what type of "relationship" is being claimed by the above recitation.

Likewise, in lines 11-15 Applicant recites "the first equation being determinative of whether a mathematical combination of at least the engine velocity and the velocity of the first motor is within a first predetermined speed range". The issue here being that one can not tell if it is the "first equation" or the "mathematical combination" which is being used as the basis by which the engine velocity and that of the first motor are validated, where the term "mathematical combination" is clearly indefinite as presently recited and claimed.

Lastly, in lines 15-18 of claim 1, Applicant recites "the engine velocity and the velocity of the first motor being validated when the mathematical combination of at least the engine velocity and the velocity of the first motor is within the first predetermined speed range". Once again, there is still the issue of what is being claimed by the recitation of a "mathematical combination", and it would seem that this type of "validation" may only be useful for determining whether or not the engine and the first motor are moving at all, and NOT actually determining or validating that the one or the other of the engine and the first motor are rotating at any particular speed or velocity.

6. In claim 10, lines 8-10, Applicant recites "mathematically combining the engine velocity, the velocity of the first motor, and the velocity of the second motor to generate a first combined speed term". Once again, Applicant has not particularly pointed out and distinctly claimed exactly what type of "mathematical combining" is being performed.

In lines 11-15 Applicant recites “comparing the first combined speed term to a first predetermined speed range, the engine velocity, the velocity of the first motor, and the velocity of the second motor being validated when the first combined speed term is within the first predetermined speed range”.

The issue here is similar to that addressed with respect to the end of claim 1, in which it is not clear exactly how Applicant is able to “validate” or verify the speed or velocity of any one or all of the engine, first motor and second motor by simply comparing Applicants claimed mathematical combination with a single combined speed term. At best it would seem to validate the combined speed term as a whole, but not with respect to any of the individual speeds or velocities of the engine, first or second motors.

7. Claims 1-19 are also rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

The omitted structural cooperative relationships are those relating to the interconnection of the vehicle engine, the first motor and the second motor.

Without such a structurally cooperative interconnection of the vehicle engine with the first (and second) motor(s), it would seem that there is then no basis for the use of Applicant's alleged “velocity relationship” as well as the claimed “mathematical combination of at least the engine velocity and the velocity of the first motor”, since then

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the motors would be considered to be running independently, without any correlation to one another, and therefore one would not be conclusively able to "validate" any one of the engine and motor speeds by simply comparing the detected value to a predetermined speed range.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-19 are rejected under 35 U.S.C. § 101 in that the claimed invention is directed to non-statutory subject matter.

The claimed invention is directed to non-statutory subject matter, because there is no end result or use of the "validation" information. Without the use of the validated engine and motor velocity information, once the comparing and "validation" has occurred. Since Applicant does not make use of this information once the mathematical manipulation is finished, all that which is being claimed simply amounts to numerical processing without any concrete application or use which would then place the claims into one of the statutory classes of invention listed above.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Pipala whose telephone number is 571-272-1360. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ejp

  
JACK KEITH  
SUPERVISORY PATENT EXAMINER